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12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 OBESITY RESEARCH INSTITUTE, LLC,

15 Plaintiff & Counterclaim-  
16 Defendant,

17 v.

18 FIBER RESEARCH INTERNATIONAL,  
19 LLC,

20 Defendant & Counterclaim-  
21 Plaintiff.

Case No. 15-cv-595-BAS-MDD

**PROTECTIVE ORDER**

1     1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the  
6 following Stipulated Protective Order.

7           The parties acknowledge that this Order does not confer blanket protections on all  
8 disclosures or responses to discovery and that the protection it affords from public  
9 disclosure and use extends only to the limited information or items that are entitled to  
10 confidential treatment under the applicable legal principles. The parties further  
11 acknowledge that this Stipulated Protective Order does not entitle them to file confidential  
12 information under seal, and that the Local Rules set forth the procedures that must be  
13 followed and the standards that will be applied when a party seeks permission from the  
14 court to file material under seal.

15     2.     DEFINITIONS

16           2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order.

18           2.2    “CONFIDENTIAL” Information or Items: information (regardless of how it is  
19 generated, stored or maintained) or tangible things that qualify for protection under Federal  
20 Rule of Civil Procedure 26(c).

21           2.3    Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
22 well as their support staff).

23           2.4    Designated House Counsel: House Counsel who seek access to “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

25           2.5    Designating Party: a Party or Non-Party that designates information or items  
26 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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1        2.6 Disclosure or Discovery Material: all items or information, regardless of the  
 2 medium or manner in which it is generated, stored, or maintained (including, among other  
 3 things, testimony, transcripts, and tangible things), that are produced or generated in  
 4 disclosures or responses to discovery in this matter.

5        2.7 Expert: a person with specialized knowledge or experience in a matter  
 6 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an  
 7 expert witness or as a consultant in this action, (2) is not a past or current employee of a  
 8 Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to  
 9 become an employee of a Party or of a Party's competitor.

10        2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
 11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to  
 12 another Party or Non-Party would create a substantial risk of serious harm that could not be  
 13 avoided by less restrictive means.

14        2.9 House Counsel: attorneys who are employees of a party to this action. House  
 15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16        2.10 Non-Party: any natural person, partnership, corporation, association, or other  
 17 legal entity not named as a Party to this action.

18        2.11 Outside Counsel of Record: attorneys who are not employees of a party to this  
 19 action but are retained to represent or advise a party to this action and have appeared in this  
 20 action on behalf of that party or are affiliated with a law firm which has appeared on behalf  
 21 of that party.

22        2.12 Party: any party to this action, including all of its officers, directors,  
 23 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
 24 staffs).

25        2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
 26 Material in this action.

27        2.14 Professional Vendors: persons or entities that provide litigation support  
 28 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,

1 and organizing, storing, or retrieving data in any form or medium) and their employees and  
2 subcontractors.

3 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
4 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
6 Producing Party.

7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only Protected  
9 Material (as defined above), but also (1) any information copied or extracted from Protected  
10 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)  
11 any testimony, conversations, or presentations by Parties or their Counsel that might reveal  
12 Protected Material.

13 However, the protections conferred by this Stipulation and Order do not cover the  
14 following information: (a) any information that is in the public domain at the time of  
15 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a  
16 Receiving Party as a result of publication not involving a violation of this Order, including  
17 becoming part of the public record through trial or otherwise; and (b) any information  
18 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party  
19 after the disclosure from a source who obtained the information lawfully and under no  
20 obligation of confidentiality to the Designating Party.

21 Any use of Protected Material at trial shall be governed by a separate agreement or  
22 order.

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations imposed  
25 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or  
26 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)  
27 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
28 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,

1 trials, or reviews of this action, including the time limits for filing any motions or  
 2 applications for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
 5 Party or Non-Party that designates information or items for protection under this Order  
 6 must take care to limit any such designation to specific material that qualifies under the  
 7 appropriate standards. To the extent it is practical to do so, the Designating Party must  
 8 designate for protection only those parts of material, documents, items, or oral or written  
 9 communications that qualify, so that other portions of the material, documents, items, or  
 10 communications for which protection is not warranted are not swept unjustifiably within the  
 11 ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 13 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 14 unnecessarily encumber or retard the case development process or to impose unnecessary  
 15 expenses and burdens on other parties) expose the Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it  
 17 designated for protection do not qualify for protection at all or do not qualify for the level of  
 18 protection initially asserted, that Designating Party must promptly notify all other parties  
 19 that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
 21 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 22 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
 23 must be clearly so designated before the material is disclosed or produced. Designation in  
 24 conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents,  
 26 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
 27 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
 28 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing Party  
2 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
3 the margins) and must specify, for each portion, the level of protection being asserted.

4 A Party or Non-Party that makes original documents or materials available for  
5 inspection need not designate them for protection until after the inspecting Party has  
6 indicated which material it would like copied and produced. During the inspection and  
7 before the designation, all of the material made available for inspection shall be deemed  
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party  
9 has identified the documents it wants copied and produced, the Producing Party must  
10 determine which documents, or portions thereof, qualify for protection under this Order.  
11 Then, before producing the specified documents, the Producing Party must affix the  
12 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
13 EYES ONLY”) to each page that contains Protected Material. If only a portion or portions  
14 of the material on a page qualifies for protection, the Producing Party also must clearly  
15 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and  
16 must specify, for each portion, the level of protection being asserted.

17 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
18 that the Designating Party identify on the record, before the close of the deposition, hearing,  
19 or other proceeding, all protected testimony and specify the level of protection being  
20 asserted. When it is impractical to identify separately each portion of testimony that is  
21 entitled to protection and it appears that substantial portions of the testimony may qualify  
22 for protection, the Designating Party may invoke on the record (before the deposition,  
23 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the  
24 specific portions of the testimony as to which protection is sought and to specify the level of  
25 protection being asserted. Only those portions of the testimony that are appropriately  
26 designated for protection within the 21 days shall be covered by the provisions of this  
27 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
28 deposition or up to 21 days afterwards if that period is properly invoked, that the entire

transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the



1 material is treated in accordance with the provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
4 confidentiality at any time. Unless a prompt challenge to a Designating Party's  
5 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
6 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
7 does not waive its right to challenge a confidentiality designation by electing not to mount a  
8 challenge promptly after the original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
10 process by providing written notice of each designation it is challenging and describing the  
11 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
12 written notice must recite that the challenge to confidentiality is being made in accordance  
13 with this specific paragraph 6 of the Protective Order. The parties shall attempt to resolve  
14 each challenge in good faith and must begin the process by conferring directly (in voice-to-  
15 voice dialogue; other forms of communication are not sufficient) within 14 days of the date  
16 of service of notice. In conferring, the Challenging Party must explain the basis for its belief  
17 that the confidentiality designation was not proper and must give the Designating Party an  
18 opportunity to review the designated material, to reconsider the circumstances, and, if no  
19 change in designation is offered, to explain the basis for the chosen designation. A  
20 Challenging Party may proceed to the next stage of the challenge process only if it has  
21 engaged in this meet and confer process first or establishes that the Designating Party is  
22 unwilling to participate in the meet and confer process in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality  
25 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing  
26 that the meet and confer process will not resolve their dispute, whichever is earlier. Each  
27 such motion must be accompanied by a competent declaration affirming that the movant has  
28 complied with the meet and confer requirements imposed in the preceding paragraph.



1 Failure by the Designating Party to make such a motion including the required declaration  
2 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
3 designation for each challenged designation.

4 In addition, the Challenging Party may file a motion challenging a confidentiality  
5 designation at any time if there is good cause for doing so, including a challenge to the  
6 designation of a deposition transcript or any portions thereof. Any motion brought pursuant  
7 to this provision must be accompanied by a competent declaration affirming that the movant  
8 has complied with the meet and confer requirements imposed by the preceding paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the  
10 Designating Party. Unless the Designating Party has waived the confidentiality designation  
11 by failing to file a motion to retain confidentiality as described above, all parties shall  
12 continue to afford the material in question the level of protection to which it is entitled  
13 under the Producing Party's designation until the court rules on the challenge.

#### 14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
16 disclosed or produced by another Party or by a Non-Party in connection with this case only  
17 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material  
18 may be disclosed only to the categories of persons and under the conditions described in  
19 this Order. When the litigation has been terminated, a Receiving Party must comply with  
20 the provisions of section 13 below (FINAL DISPOSITION). Protected Material must be  
21 stored and maintained by a Receiving Party at a location and in a secure manner that  
22 ensures that access is limited to the persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
24 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party  
25 may disclose any information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
28 disclose the information for this litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

(f) professional jury or trial consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Designated House Counsel of the Receiving Party (1) who has no

involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4 have been followed.

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4 have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

(f) professional jury or trial consultants who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A); and

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel and Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, (2) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Designated House Counsel, and (3) describes the Designated House Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is

involved, or may become involved, in any competitive decision-making.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

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(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by

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<sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

#### 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by

1 the Designating Party whose Protected Material may be affected.<sup>2</sup>

2 If the Designating Party timely seeks a protective order, the Party served with the  
3 subpoena or court order shall not produce any information designated in this action as  
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
5 before a determination by the court from which the subpoena or order issued, unless the  
6 Party has obtained the Designating Party’s permission. The Designating Party shall bear the  
7 burden and expense of seeking protection in that court of its confidential material – and  
8 nothing in these provisions should be construed as authorizing or encouraging a Receiving  
9 Party in this action to disobey a lawful directive from another court.

10 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
11 THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by a Non-Party  
13 in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
14 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection  
15 with this litigation is protected by the remedies and relief provided by this Order. Nothing  
16 in these provisions should be construed as prohibiting a Non-Party from seeking additional  
17 protections.

18 (b) In the event that a Party is required, by a valid discovery request, to produce a  
19 Non-Party’s confidential information in its possession, and the Party is subject to an  
20 agreement with the Non-Party not to produce the Non-Party’s confidential information, then  
21 the Party shall:

22 1. promptly notify in writing the Requesting Party and the Non-Party that  
23 some or all of the information requested is subject to a confidentiality agreement with a  
24 Non-Party;

25 2. promptly provide the Non-Party with a copy of the Stipulated Protective  
26 \_\_\_\_\_

27 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of  
28 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
protect its confidentiality interests in the court from which the subpoena or order issued.



Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>3</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

#### 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

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<sup>3</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.



11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future. The Court may modify the protective order in the interests of justice or for public policy reasons on its own initiative.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with the Local Rules. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Receiving Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the Protected Material in the public record unless otherwise instructed by the court.

12.4 No document shall be filed under seal unless counsel secures a court order allowing the filing of a document, or portion thereof, under seal. An application to file a

document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person or entity who has custody and control of the document, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application to notify the Court that an opposition to the application will be filed.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO ORDERED.

Dated: **October 23, 2015**



Hon. Mitchell D. Dembin  
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address],  
declare under penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Southern  
District of California on \_\_\_\_\_ [date] in the case of *Obesity Research Inst., LLC v.*  
*Fiber Research Int'l, LLC*, No. 15-cv-595-BAS-MDD. I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I understand and  
acknowledge that failure to so comply could expose me to sanctions and punishment in the  
nature of contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Southern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this  
action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]